

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

THURSDAY, THE 15TH NOVEMBER 2007 / 24TH KARTHIKA 1929

CRL.A.No. 734 of 2003()

SC.538/2001 of III ADDL. SESSIONS COURT, THRISSUR
CP.23/2001 of JUDL. MAGISTRTE OF FIRST CLASS COURT-III, THRISSUR
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APPELLANT/ACCUSED:

JOHNY @ JOHN, S/O. VAZHAKKOOTTATHIL
FRANCIS, PANANCHERY VILLAGE, MAYILADUMPARA DESOM,
THRISSUR DISTRICT.

BY ADV. SRI.C.C.THOMAS

RESPONDENT: COMPLAINANT

STATE OF KERALA, REPRESENTED BY
EXCISE INSPECTOR, THRISSUR EXCISE RANGE,
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. PUZHAKKARA MOHAMMED

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD
ON 16/11/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

ORDER IN CRL. M.A. NO. 4811 OF 2003 IN CRL. APPEAL NO.
NO. 734 OF 2003.

DISMISSED

15.11.2007

Sd/-(K.THANKAPPAN, JUDGE)

K.THANKAPPAN, J.

CRL. APPEAL NO. 734 OF 2003

Dated this the 15th day of November, 2007

JUDGMENT

This appeal is filed against the judgment in S.C. No.538 of 2001 on the files of the III Additional Sessions Court, Thrissur. The appellant faced trial for the offence punishable under Section 58 of the Abkari Act.

2. Learned counsel appearing for the appellant has raised two grounds challenging the judgment of the trial court. The first contention raised by the learned counsel is that in the light of the decisions of this Court reported in **Surendran v. Excise Inspector, 2004(1) K.L.T. 404**, **Sudhepan @ Aniyam v. State of Kerala, 2005(2) K.L.D. (Cri) 631** and **Sabu v. State of Kerala, 2007(4) K.L.T. 169**, the conviction entered by the trial court against the appellant under Section 58 of the Abkari Act is not sustainable. The second contention is that the prosecution had not proved that the contraband articles found in the possession of the appellant were imported to the State in contravention to the provisions of the Abkari Act.

3. The trial court found the appellant guilty under Section 58 of the Abkari Act as he was found in possession of 8 bottles each containing 750 ml. of Indian made foreign liquor without any licence or permit. To come to this conclusion, the trial court relied on the evidence of PWs.1 to 5 and also Exts.P1 to P10 and MOs.1 and 2. Admittedly, the case of the prosecution was that the contraband articles seized from the appellant - accused were eight bottles of Indian made foreign liquor. The prosecution had a further case that the appellant had no permit or licence to possess the contraband articles. As per the principles laid down in the decision reported in **Sabu v. State of Kerala, 2007(4) K.L.T. 169**, possession of Indian made foreign liquor exceeding the quantity as notified by the Government under Sections 10 and 13 of the Abkari Act is violation of Rules 11 and 11A of the Foreign Liquor Rules which is punishable under Section 63 of the Abkari Act. Applying the above principle, the finding of the trial court that the appellant committed offence punishable under Section 58 of the Abkari Act is not sustainable. To attract an offence under Section 58 of the Abkari Act, the prosecution must prove that the liquor was illegally procured. The evidence adduced before the trial court would show that the entire quantity of foreign liquor was procured from the Kerala State Beverages Corporation. This fact was admitted by the Investigating Officer. In the above circumstances, the

finding of the trial court that the appellant committed offence punishable under Section 58 of the Abkari Act and the conviction and sentence ordered under that section are set aside.

4. Considering the entire evidence , this Court is of the view that the trial court was correct in finding that the prosecution succeeded in proving that the appellant was found in possession of eight bottles of Indian made foreign liquor. Violation of Rules 11 and 11A of the Foreign Liquor Rules would attract an offence punishable under Section 63 of the Abkari Act. Accordingly, the appellant is found guilty under Section 63 of the Abkari Act, he is convicted thereunder and sentenced to pay a fine of Rs.5,000/- and in default of payment of fine, to undergo simple imprisonment for three months. It is reported that the appellant had already remitted an amount of Rs.15,000/- at the time of admission of the appeal. If so, the fine imposed by this Court shall be reduced from that amount and the balance amount shall be refunded to the appellant as per law.

With the above modification in the conviction and sentence, the Crl. Appeal is dismissed.

(K.THANKAPPAN, JUDGE)

sp/

K. THANKAPPAN, J.

CRL.A. NO.734/2003

JUDGMENT

15TH NOVEMBER, 2007